

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MICHAEL RAY WEST,

Plaintiff,

v.

WARDEN BALDEN POLK, *et al.*,

Defendants.

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CIVIL ACTION NO. 5:19-CV-00174-RWS

ORDER

Plaintiff Michael Ray West, proceeding *pro se*, filed the above-captioned action complaining of alleged violations of his constitutional rights. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Motions to dismiss for failure to exhaust administrative remedies have been filed by the Defendants Michelle Garland, Jonathan Huff, Darious King, Krystle Moss and Balden Polk (Docket No. 35), Leonard Willis (Docket No. 48) and Derrick Radford (Docket No. 57). Each motion points to Plaintiff's Second Amended Complaint (Docket No. 21) as stating that Plaintiff has not completed the exhaustion process and argues that the face of the complaint thereby establishes the failure to exhaust. Plaintiff filed a response to these motions. Docket Nos. 49, 63.

After review of the pleadings, the Magistrate Judge issued a Report and Recommendations (Docket No. 67) recommending denial of the motions to dismiss because the record before the Court was not sufficient to resolve the exhaustion question on the pleadings alone. *See Cantwell v. Anderson*, 788 F.3d 507, 509 (5th Cir. 2015); *Watkins v. Anderson*, 213 F.3d 635 (5th Cir. 2000). Plaintiff received a copy of the Report and Recommendations on or before September 17, 2021.

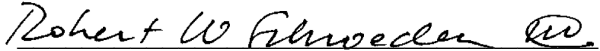
Docket No. 70. No objections to the Report and Recommendations were filed. Accordingly, the parties are barred from *de novo* review by the District Judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected- to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

Nevertheless, the Court has reviewed the pleadings in this cause and the Report and Recommendations of the Magistrate Judge. Upon such review, the Court has determined that the Report and Recommendations of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, the Report and Recommendations of the Magistrate Judge (Docket No. 67) is **ADOPTED** as the opinion of the District Court. It is thus

ORDERED that Defendants' motions to dismiss (Docket Nos. 35, 48, 57) are **DENIED**. It is further

ORDERED that Defendants have **14 days from the issuance** of this order to file their answer to the lawsuit. FED. R. CIV. P. 12(a)(4)(A). The deadlines in the scheduling order set out in Docket No. 30 shall go into effect upon the filing of the answer. The denial of the motions to dismiss shall not preclude the Defendants from raising the issue of exhaustion in a motion for summary judgment or in another procedurally proper way, nor shall it preclude the Plaintiff from presenting such defenses as he may have to any motions for summary judgment filed by the Defendants.

So ORDERED and SIGNED this 18th day of November, 2021.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE